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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE DISTRICT OF ARIZONA

12 United States of America,

13 Plaintiff,

14 v.

15 Abdul Malik Abdul Kareem,

16 Defendant.

17 No. CR-15-00707-01-PHX-SRB

18
19 **RESPONSE TO DEFENDANT'S**
20 **SUPPLEMENTAL MOTION FOR NEW**
21 **TRIAL**

22 The Court should deny Kareem's Supplemental Motion for New Trial (CR 505,
23 541) and allow the pending appeal to proceed. Kareem's motion refers to three categories
24 of what he claims is new evidence: (A) transcripts from the 2018 trial of Eric Hendricks,
25 including the prosecutor's opening statement and testimony of an FBI undercover
employee (UCE); (B) pole camera footage capturing a common area of the apartment
complex at which Elton Simpson and Nadir Soofi lived; and (C) information obtained
during Customs inspections of Saabir Nurse. None of this is a basis for a new trial here.

26 The Hendricks trial, which occurred two years after the 2016 trial in this case, is not
27 *Brady* material. The prosecutor's opening statement is not evidence, and transcripts of the
28 UCE's testimony add nothing new and do not conflict with the case presented at Kareem's

1 trial. The same is true of the pole camera footage and the information resulting from Saabir
2 Nurse's out-bound and in-bound Customs inspections in 2015. The information is neither
3 exculpatory nor material to the charges in this case, and it does not conflict with the strong
4 evidence that demonstrated Kareem's participation in the conspiracies. In short, it does
5 not meet the high bar to undermine confidence in the verdict. Thus, Defendant's motion
6 should be denied.

7 **I. Brief Background**

8 The facts of the case are lengthy and set forth in detail in the government's Response
9 to Kareem's Motion for New Trial and Motion for Judgment of Acquittal (CR 324), its
10 Response to Kareem's Supplemental Brief in Support of Motion for New Trial (CR 441),
11 and the Court's Order denying the motions (CR 469). Thus, we will only briefly restate
12 here a few pertinent background facts.

13 The material support conspiracy charged in Count Five began in or around June
14 2014. Similarly, the conspiracy to transport firearms in interstate commerce charged in
15 Count One began in or around January 2015. During Kareem's trial, the testimony of
16 Sergio Martinez, Ali Soofi, Stephan Verdugo, and juvenile witnesses Carlos and Juan, as
17 well as that of various other witnesses, all established conspiratorial acts of Kareem,
18 Simpson and Soofi that occurred well before the UCE made contact with Simpson online.
19 Specifically, all of Kareem's conspiratorial acts with Elton Simpson and Nadir Soofi
20 began, and were complete, well before the FBI Undercover Employee (UCE) first made
21 online contact with Simpson on April 23, 2015.

22 No evidence shows Hendricks was engaged in any form of communication with
23 Elton Simpson on May 3, 2015. The phones recovered at the Garland attack scene, the
24 content of which was disclosed before trial, did not contain any communications between
25 Simpson and Hendricks, and agents involved in the Hendricks investigation recovered no
26 evidence from Hendricks showing communications with Simpson. Hendricks declared he
27 was not in contact with Simpson at the time, and the messages show Simpson had dropped
28

1 his account through which the UCE communicated with him and Hendricks had dropped
2 his account as well.¹ (CR 441-1 at 190-91, 222.)

3 Meanwhile, the government introduced evidence at trial showing Simpson
4 conspired with others in addition to Soofi and Kareem, including Mujahid Miski and Junaid
5 Hussain, to commit attacks in the United States for ISIS. (See Tr. Exh. 157, 480.) In
6 addition, the government disclosed results from grand jury subpoenas served on Surespot
7 on October 13, 2015 (Bates # 436). On January 29, 2016, the government disclosed a
8 report (Bates # 1887-1894) analyzing those returns, in which the author noted Simpson
9 engaged in at least 209 Surespot communications with Miski leading up to the attack, with
10 at least 103 messages being exchanged on the day of the attack, May 3, 2015. The
11 government could not recover the content of these encrypted messages. Simpson's
12 association with Miski was public knowledge shortly after the attacks. See
13 <https://www.counterextremism.com/extremists/elton-simpson>.

14 Nothing about the UCE's presence in Garland or his communications with Simpson
15 and Hendricks has anything to do with Kareem's, Simpson's, and Nadir Soofi's activities
16 months earlier. In the Hendricks trial, the UCE testified that his purpose in traveling to
17 Garland on May 3, 2015, was "to be able to demonstrate to [Hendricks] that I was following
18 his guidance." He said his "goal was to go there, observe the event, take pictures, and so
19 when I later met him face-to-face, I could pull up my phone and say, 'Look it. I was there.'" He
20 did so in order to be able to "tell him that I went to execute this solid one-man protest"
21 and he "had planned to use a security reason to say that it was not suitable for me to execute
22 the task." (Exh. 2 at 6-7, Hendricks RT 3/9/18 at 1001-02).

23 **II. Applicable Law**

24 Pursuant to the Supreme Court's holding in *Brady v. Maryland*, 373 U.S. 83, 87
25 (1963), prosecutors are constitutionally obligated to disclose evidence favorable to an
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27
28 ¹ Hendricks also advised the UCE to delete his account through which he had
communicated with Simpson. (CR 441-1 at 174.)

1 accused that is material either to guilt or to punishment. *Kyles v. Whitley*, 514 U.S. 419,432
2 (1995); *Jones v. Ryan*, 733 F.3d 825, 837 (9th Cir. 2013).

3 To establish a *Brady* violation, a Defendant must show three elements: (1) the
4 information at issue must be favorable to the accused, either because it is exculpatory, or
5 because it is impeaching; (2) the information must have been suppressed by the
6 [government], either willfully or inadvertently; and (3) the information was material,
7 meaning there is a reasonable probability that the result of the proceedings would have
8 been different. *United States v. Sedaghaty*, 728 F.3d 885, 899 (9th Cir. 2013). *United*
9 *States v. Kohring*, 637 F.3d 895, 902-903 (9th Cir. 2011) (citation and internal quotation
10 marks and alterations omitted).

11 Evidence is “favorable to the accused” for *Brady* purposes if it is either exculpatory
12 or impeaching. *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999). “If information would
13 be ‘advantageous’ to the defendant or ‘would tend to call the government’s case into
14 doubt,’ it is favorable.” *Comstock v. Humphries*, 786 F.3d 701, 708 (9th Cir. 2015) (quoting
15 *Banks v. Dretke*, 540 U.S. 668, 691 (2004) and *Milke v. Ryan*, 711 F.3d 998, 1012 (9th Cir.
16 2013)) (internal citations omitted). Materiality is determined by weighing several factors,
17 including the importance of the witness, the significance of the evidence, and the strength
18 of the prosecution’s case. *Kyles*, 514 U.S. at 436-37.

19 To establish materiality, a defendant needs to establish “a ‘reasonable probability’
20 of a different result.” *Id.* at 434; *United States v. Agurs*, 427 U.S. 97, 109-110 (1976)
21 (quoting *United States v. Bagley*, 473 U.S. 667, 678)); *see also Sedaghaty*, 728 F.3d at 900
22 (“In evaluating materiality, we focus on whether the withholding of the evidence
23 undermines our trust in the fairness of the trial and the resulting verdict.”). The mere
24 possibility that an item of undisclosed information might have helped the defense or might
25 have affected the outcome of the trial does not establish “materiality” in the constitutional
26 sense. *Agurs*, 427 U.S. at 109-110. *See also Cone v. Bell*, 556 U.S. 449, 469-70 (2009)
27 (evidence is material when there is “a reasonable probability that, had the evidence been
28

1 disclosed, the result of the proceeding would have been different") (citing *Bagley*, 473 at
2 682).

3 Finally, the rule of *Brady* applies only to information "unknown to the defense."
4 *Agurs*, 427 U.S. at 103.

5 **III. No *Brady* Violation Occurred**

6 In his motion, Kareem argues about three main subjects. The first involves the
7 March 2018 trial of Erick Jamal Hendricks in Cleveland, Ohio. Defendant claims the
8 prosecutor's opening statement concerning the connection between Hendricks and the
9 attack on the Muhammad Art Exhibit and Contest in Garland, Texas, is newly-discovered
10 evidence. He makes similar arguments about testimony of the FBI UCE, which Kareem
11 claims showed a connection between Hendricks and the attack, described the FBI's
12 investigative capacity, and implicated Hendricks' level of knowledge. The second subject
13 is pole camera video footage from the exterior of the Simpson/Soofi apartment on May 1,
14 2015, which Kareem claims would have served to impeach a government witness. The
15 third is information gleaned from Customs inspections of Saabir Nurse in 2015, which
16 Kareem claims would have helped show Nurse was the person providing funding to
17 Simpson and Soofi for the Garland attack.

18 For the reasons explained below, none of these arguments justifies a new trial.

19 **A. The Hendricks Trial**

20 With respect to information related to the trial of Erick Jamal Hendricks in the
21 Northern District of Ohio, the government respectfully submits this Supplemental Motion
22 for New Trial is the equivalent of a motion to reconsider, because it does not set forth new
23 evidence that was unavailable at the time Kareem filed his supplemental brief in support
24 of his original motion for new trial.

1. A Statement Made by an Attorney in Opening Statements is not Evidence, Nor is Any of What Was Said Exculpatory or Newly-Discovered.

3 First, Kareem claims one of the attorneys representing the United States in a
4 separate prosecution in the Northern District of Ohio made an opening statement on March
5 8, 2018, that is newly-discovered evidence. Kareem isolates the attorney's statement about
6 Hendricks being "unequivocally tied"² to the Garland attack perpetrated by Simpson and
7 Soofi and claims, "[t]his is not what this Court heard previously from the government in
8 Kareem's case." (CR 505 at 3.) However, the prosecutor in the Hendricks trial did not
9 state Hendricks did anything to aid Simpson and Soofi in conducting the attack. Nor did
10 the prosecutor state Hendricks encouraged Simpson and Soofi to conduct the attack.

11 In fact, the prosecutor expressly disclaimed that Hendricks was involved in planning
12 the attack or participated in the attack: “Now, **this defendant did not plan or participate**
13 **in this attack**, nor is he on trial for this attack. But the evidence will show that he was
14 unequivocally tied to this attack.” (Exh. 1 at 3-4, Hendricks RT 3/8/18 622-23 (emphasis
15 added).) The prosecutor did not state what she meant by “unequivocally tied,” but clearly
16 she disclaimed the notion that it meant Hendricks was involved in planning or participating
17 in the attack. The prosecutor’s opening statement does not support Kareem’s allegation.

18 Just as importantly, it is settled law that an attorney's opening statement is not
19 evidence. *See* NINTH CIR. MODEL CRIM. JURY INSTR. 1.4 (2010 ed.); *United States v.*
20 *Ramirez*, 367 F.2d 813 (7th Cir. 1966). No evidence exists to support Kareem's allegation
21 that Hendricks engaged in any form of planning the Garland attack, nor does any evidence
22 exist to show Hendricks aided or assisted Simpson and Soofi in conducting the Garland
23 attack. The only evidence of Hendricks's ties to the attack were his messages to the UCE
24 in which he implied the UCE should attack the contest and should contact "Juda" (a
25 misspelled version of Simpson's "Juba" messaging handle) to see what they could do.
26 None of the evidence in the Hendricks trial showed Hendricks was in contact with Simpson

²⁸ ² The prosecutor did not use the words “inextricably intertwined,” as stated in Kareem’s amended Addendum Memorandum (CR 543).

1 at or near the time of the Garland attack. The UCE confirmed under oath during the
2 Hendricks trial that he was not in contact with Simpson after April 25, 2015,³ as previously
3 stated in the UCE's declaration. (Exh. 2 at 3, Hendricks RT 3/9/18 980.)

4 Kareem also refers to other statements by a prosecutor during opening statement in
5 the Hendricks trial. Again, opening statements are not evidence. Even if it were evidence,
6 it would not be newly discovered because the information in each of those statements was
7 part of the original complaint and in the printed screen shots from the UCE's conversations
8 with Simpson and Hendricks. Specifically, Kareem refers to the prosecutor's statements
9 that (1) Hendricks "was in contact with one of the Garland attackers, Simpson," (2)
10 Hendricks claimed to be in contact with "senior leaders from ISIS," (3) Hendricks told the
11 UCA he "wish[ed] someone could go to Texas and harass them during the night. A good
12 solid protest," and followed up with advice to "See what you and bro Juda [Simpson] can
13 do. At least be heard," (4) Hendricks asked the UCE about weapons, and if he had a weapon
14 that he could use, (5) once Hendricks understood the UCE was in Garland, Hendricks told
15 the UCE that if he saw contest organizer Pam Geller, to "make your voice heard against
16 her," (6) after the attack was foiled, Hendricks, "took credit for the attack in Garland...[and]
17 threatened future attacks in the United States, and (7) Hendricks told a person that he was
18 "friends with the shooters, that one of the shooters was a close brother who left a letter that
19 he wanted published after the attack, and asked that person to post a flyer claiming credit
20 for the attack. The prosecutor referred to a trial exhibit that "was allegedly that letter."⁴
21 (CR 505 at 4.)

22

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24 ³ The screenshots of the communications reveal the last communications between the UCE
25 and Simpson took place late at night on April 24, 2015, Arizona time. The UCE was in a
26 different time zone and the date in that time zone at that point in time was April 25, 2015.

27 ⁴ In his Supplemental Motion, Kareem noted the defense had "not yet seen a copy of the
28 flyer post from Hendricks case, but it may be the very post the government in Kareem's
case relied upon for its "material support" charges." (CR 505 at 4.) The government
obtained the exhibits to which Kareem refers in his motion and disclosed them via email
on January 25, 2019. The information about this particular document was set forth in the
Hendricks complaint. (CR 448 at 32-33). Kareem did not make any additional assertions
regarding those exhibits in his Addendum to the Supplemental Motion.

1 All of the information in these statements was contained in the criminal complaint
2 in the Hendricks case, and the majority of it came from the screen shots of communications
3 between the UCE and Simpson and communications between the UCE and Hendricks.
4 (CR 448.) The government disclosed that complaint on August 4, 2016, and disclosed the
5 screen shots on September 15, 2016. Kareem made extensive use of those materials in his
6 original Supplement to his Motion for New Trial. This information is not new, and is not a
7 proper basis for the instant Supplemental Motion for New Trial.

8

9 **2. The Testimony by the FBI Undercover Employee (UCE) Does not
Contain Relevant or Material Newly-Discovered Evidence.**

10 Kareem also asserts the UCE’s testimony in the 2018 Hendricks trial “demonstrates
11 that Hendricks played a significant role” in the Garland attack. (CR 505 at 4.) Of course,
12 trial testimony in 2018 did not exist at the time of the 2016 trial, and thus it is not something
13 the government could have suppressed in the discovery and trial phases in this case.
14 Further, the substance of the UCE’s testimony in the Hendricks trial did not reveal the
15 existence of any new exculpatory materials, nor did it reveal any basis to impeach any
16 witness’s testimony or the UCE’s declaration in this case.

17 The UCE’s discussions with Hendricks about the Garland contest began at the end
18 of April 2015, well after the UCE and Simpson ceased communication. Kareem has not
19 pointed to any evidence, in the UCE-Simpson or UCE-Hendricks communications or in
20 the Hendricks trial itself, that would show Hendricks was communicating with Simpson in
21 the same time frame in which Hendricks was communicating with the UCE about the
22 contest. Indeed, Kareem’s claim that Simpson was conspiring with Hendricks does not
23 make any sense in light of Simpson’s distrust of Hendricks, an online persona he had just
24 met on approximately April 23, 2015. The UCE’s communications with Simpson similarly
25 do not show any trusted relationship, cooperation, or plan to attack the Garland Contest.
26 Nothing in the UCE’s 2018 testimony rises to the level of material exculpatory information.

27 Kareem’s claim also makes no sense in light of the UCE’s testimony that he was
28 unarmed and unaware of Simpson’s presence at the contest. The UCE testified, “I had

1 nothing that would identify me with the FBI, so I had no badge or credentials or weapon
2 or anything that a regular agent would have. I did not.” (Exh. 2 at 7, Hendricks RT 3/9/18
3 at 1002). Kareem also expresses surprise at the UCE’s testimony that he did not know
4 whether Simpson and Soofi were in Texas at the time of the attack. (CR 505 at 5-6.)
5 Kareem states the UCE’s testimony is surprising because the FBI sent a lookout “warning
6 to federal and local authorities in Texas prior to the attack,” arguing the UCE or someone
7 else in the FBI had to have known enough to send the lookout, yet the government has not
8 disclosed exactly what the FBI knew. (CR 505 at 6.)⁵ The UCE testified that he did not
9 make contact with Simpson and did not know where Simpson was, and Hendricks did not
10 warn him that Simpson would be present. (Exh. 2 at 7-8, Hendricks RT 3/9/18 at 1002-03;
11 Exh. 3 at 4, Hendricks RT 3/12/18 at 1075).

12 The news media widely reported the existence of an FBI lookout concerning
13 Simpson, but the lookout about which they reported was not published. *See, e.g.*, Andrew
14 Grossman, *FBI Sent Warning to Police About Elton Simpson Before Cartoon Attack*, Wall
15 St. J., May 7, 2015, *available at* <https://www.wsj.com/articles/fbi-sent-warning-to-police-about-elton-simpson-before-cartoon-attack-1431028256> (last visited May 14, 2019).
16 Undersigned counsel have engaged in numerous inquiries with the FBI about the
17 aforementioned lookout/alert since the filing of the instant motion. On May 1, 2019,
18 undersigned counsel received the information that had been sent to the FBI Dallas Field
19 Office on May 3, 2015. The information was a Tactical Intel Report that had been created
20 in March 2015, and simply contained Simpson’s photo, his biographical information, and
21 other pertinent information including family members and vehicles associated with
22 Simpson. (Exh. 4, Email and Tactical Intel Report.) It was not a lookout or alert – it was
23 sent in response to a request from the Dallas Field Office, which was tracking numerous
24

25 ⁵ Kareem cites to his own counsel’s closing argument in support of his claim that the
26 “warning had information concerning the suspects’ vehicles and included a picture of
27 Simpson.” (CR 505 at 6 (citing RT 3/11/16 at 2801-02).) In response to leading questions
28 on cross-examination, Agent Whitson declared it was his “understanding” that a
lookout/alert was sent and it included a picture of Simpson. (RT 3/2/16 1900-01.) Whitson
did not testify about the specifics of any alert or even confirm direct knowledge of such an
alert, and did not testify about an alert that included information about vehicles. (*Id.*)

1 other threats to the contest, and was not broadly disseminated. (Exh. 5, Hegwood
2 Declaration.) No other lookout or alert appears to have been sent with respect to Simpson
3 and/or Nadir Soofi.

4 Kareem's counsel raised the issue of the lookout during closing argument at trial.
5 (RT 3/11/2016 2801-02.) Additionally, Kareem raised the issue of the UCE's denial of
6 specific knowledge of Simpson's and Soofi's presence in Garland, juxtaposed against the
7 alleged existence of the FBI lookout, in his Supplemental Brief in Support of Motion for
8 New Trial (CR 432 at 2, 3, 9). Therefore, this is of no substance and is not newly-
9 discovered information.

10 Further related to the UCE's testimony, Kareem notes the UCE testified about
11 obtaining supervisory authorization to engage in various steps during his investigation of
12 Hendricks. (CR 505 at 6-7.) The UCE testified about checking in with local agents at the
13 scene and sitting in his car. (Exh. 2 at 9, Hendricks RT 3/9/18 at 1004.). "I had a pretty
14 narrow task to sit in a car in a parking lot and I -- you know, I had some knowledge, but I
15 didn't have intimate knowledge of the FBI's presence physically there. (Exh. 3 at 3,
16 Hendricks RT 3/12/18 at 1072). Kareem claims additional undisclosed reports must exist
17 concerning directions the UCE received directing him to "make contact with Simpson
18 before the attack and his travel and experience while in Garland, Texas . . ." (CR 505 at
19 8.) Again, the UCE testified about his reaction to being near the attack, being caught by
20 utter surprise and feeling helpless. (Exh. 2 at 15, Hendricks RT 3/9/18 at 1019.) The notion
21 that an undercover FBI employee would seek and obtain supervisory approval to engage
22 in various investigative steps is neither novel nor surprising and is not new evidence.

23 Next, Kareem questions the validity of UCE's statement that he did not know
24 Simpson and Soofi would be in Texas. He points to the existence of an FBI lookout for
25 Simpson as evidence to undermine the UCE's statement that he was unaware Simpson and
26 Soofi would be in Garland. The fact that the UCE expressed concern about Simpson based
27 on his prior communications and Hendricks's statements is irrelevant to Kareem's case.
28 Noting the possibility that Simpson might show up in Garland is not remotely equivalent

1 to actual knowledge of his presence and/or planning to meet with him. The UCE testified
2 that he was not aware Simpson and Soofi were in Garland, and multiple other statements
3 in his testimony and the photos he took support that statement. First, the UCE testified that
4 he was unarmed and powerless to intervene as the attack unfolded. (Hendricks RT
5 3/9/2018 1002, 1019, *supra*.) “I had no means to physically interdict the shooting. I had
6 no weapon with me. My vehicle was at a point where it was passed [sic] the area of the
7 attack so it wasn’t like I could use my forward momentum of the vehicle to, you know,
8 interdict the attackers.” (Hendricks RT 3/9/2018 1019). Further, the photographs he took
9 were of the Culwell Center, just as he testified, and not of Simpson and Soofi or their
10 vehicle. (Hendricks RT 3/9/2018 1017; 3/12/2018 1190). The photos themselves depict
11 the Culwell Center entrance from opposite directions, corroborating the UCE’s testimony
12 that he drove one direction down Naaman Forest Boulevard and took a picture, then turned
13 around and took a photo while traveling the opposite direction shortly before the attack
14 began. (Exh. 2 at 11-13, Hendricks RT 3/9/2018 1015-17; CR 456 at 3-4.) The notion that
15 an undercover agent would knowingly be in proximity to an impending attack involving
16 high-powered rifles while unarmed simply defies common sense.

17 Kareem also claims without any supporting evidence that the FBI targeted him
18 because it was embarrassed by its failure to prevent the attack in light of the information it
19 possessed. The notion that the FBI targeted Kareem alone for prosecution after the attack
20 is factually inaccurate as well as legally irrelevant.

21 The FBI conducted a very broad investigation in the wake of the attack. The
22 government disclosed search warrants and results for other individuals who were under
23 investigation in the wake of the attack on a 1TB hard drive, Bates # 436 (10/13/15).
24 Moreover, the FBI continued to investigate the possibility of involvement of other persons
25 even after charges were filed in this case. For instance, in the October 16, 2015, interview
26 of Robert Abke, disclosed at Bates # 1697-1699 (January 29, 2016), agents showed Abke
27 photos of Simpson, Nadir Soofi, Kareem and six other people, including Nurse and Sabari.
28

The attack made it obvious that the FBI missed signs of Simpson becoming “operational” as opposed to someone merely exercising his right to free speech. Pointing blame in hindsight, however, does nothing to undermine the testimony of witnesses with personal knowledge of Kareem’s words and deeds. It does nothing to undermine corroborating evidence, including the fact that Kareem possessed ammunition matching that found at the Garland crime scene, the existence of computer records corroborating A.S.’s testimony, and computer records demonstrating that Kareem lied during his testimony. The argument fails legally because the proof at trial established Kareem’s guilt beyond a reasonable doubt, and mere allegations concerning the adequacy of the investigation or the agents’ motives for investigating are irrelevant to analyzing the strength of the evidence itself. *See U.S. v. Patrick*, 248 F.3d 11, 21 (1st Cir. 2001) (“speculative evidence of the inadequacy of the police investigation would have shifted the jury’s focus from the accusations against [defendant] to accusations against the police, thus creating a real danger of unfair prejudice and jury confusion that “substantially outweighed” the evidence’s probative value”). *See also Whren v. United States*, 517 U.S. 806, 813 (1996) (police officers’ “[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.”).

3. The FBI's Investigative Capacity is Neither Material nor Newly-Discovered Evidence.

Kareem also claims the UCE’s testimony “suggests the FBI has a robust and sophisticated investigative capacity, capable of establishing involvement if one were indeed involved or evidencing lack of involvement.” (CR 505 at 5.) Kareem argues that the evidence in the Hendricks trial “revealed common practices, such as encrypted conversations, shifting user names, and other tactics common to jihadis” and notes the evidence did not show Kareem engaged in any such activities.⁶ (CR 505 at 10.)

This information is not new – it was apparent throughout the UCE’s communications with Hendricks (during which Hendricks changed user names multiple times), which were the subject of Kareem’s supplement to his motion for new trial. (CR

⁶ In his argument on this point, Kareem claims “[t]here was no discovery produced by the government in Kareem’s case that the government knew Simpson was communicating as “Juba.” CR 505 at 13. This claim is untrue – the government disclosed grand jury subpoena returns for Simpson’s Surespot accounts, including his Juba2, Juba1911 and Juba8021 handles, and search warrant results for his Juba1911 handle (No. 15-8231MB). Likewise, the government disclosed all of Simpson’s Twitter records, including those under his @tawaakul handle. All of these materials were in the hard drive marked Bates number 436, disclosed on October 13, 2015.

1 432, 441-1.) Additionally, the communications with the UCE would not have operated to
2 exculpate Kareem given the timing and nature of his role in the conspiracy. The
3 government never asserted that Kareem had an online presence, for recruitment or
4 otherwise, in furtherance of the conspiracy. Rather, the government introduced evidence
5 showing Simpson acted as the conduit between the conspirators and other ISIS supporters
6 and posted public messages on Twitter about the contest. Thus, the absence of any
7 reference to Kareem in the UCE’s communications about the investigation is unsurprising
8 given the fact that the UCE engaged only in written online communications during the
9 investigation. None of this is a basis for a new trial.

10

11 **4. The UCE’s Testimony did not Suggest Hendricks Knew More About the**
12 **Attack than Kareem, and is not Newly-Discovered Evidence on this**
13 **Point.**

14 Kareem claims the UCE’s conversations with Hendricks suggest “Hendricks knew
15 more about the attack than Kareem” because Hendricks knew “Simpson was going to
16 Garland, Texas, with another ‘brother’” and “thought the [UCE] had been one of the
17 attackers.” (CR 505 at 6.)

18 This contention is not new and was the subject of Kareem’s Supplemental Brief in
19 support of his original Motion for New Trial. There is no basis for relitigating the same
20 arguments. Again, this contention is wrong and not supported by the evidence. The
21 communications between the UCE and Simpson and the UCE and Hendricks were not
22 *Brady* material because they were not favorable to Kareem, either as exculpatory material
23 or impeachment evidence. Hendricks told the UCE to act alone in the form of a “one-man
24 protest.” (Exh. 2 at 4-5, Hendricks RT 3/9/18 996-97; Exh. 3 at 5, Hendricks RT 3/12/18
25 at 1083.) Hendricks also was so unaware of Simpson’s and Soofi’s attack plans that
26 Hendricks mistakenly thought the UCE attacked the contest and died. (Exh. 2 at 16-17,
27 Hendricks RT 3/9/18 at 1025-26.) The written communications have no significance to
28 the prosecution of Kareem or Kareem’s involvement in the conspiracies for which he was
charged, and likewise are not favorable to Kareem or impeachment evidence. The

1 communications speak for themselves and tell the whole story of the relationship, or lack
2 thereof, between the parties.

3 As this Court found, “[t]he Government’s disclosure does not create any nexus
4 between the undercover agent’s investigation and Defendant. The disclosure does not call
5 into question Defendant’s involvement in watching videos with Soofi and Simpson, taking
6 Simpson and Soofi shooting, or supplying Simpson and Soofi with firearms. Therefore,
7 the disclosure is not exculpatory or material to his defense.” (CR. 469 at 9, Amended
8 Order.) For that same reason, his argument is unavailing here.

9 **B. The Pole Camera Footage Adds Nothing to the Case**

10 In his addendum to his supplemental motion for new trial (CR 543), Kareem asserts
11 additional arguments related to disclosure the government provided on March 15, 2019,
12 which included video footage from a pole camera that was visually recording activities in
13 a common area of the Simpson/Soofi apartment on and after May 1, 2015.⁷ Undersigned
14 counsel became aware of the video in 2019, well after the trial, and disclosed it simply
15 because it captured images of Simpson and Nadir Soofi on May 1, 2015. The video is not
16 relevant to any defense or probative of any fact at issue in this case.

17 The video from the pole camera is unremarkable and does not include audio. It does
18 not show the actual door to the apartment, but rather a common portal shared with other
19 apartments. As a result, numerous other individuals unrelated to the case appear in the
20 video. There is nothing in that footage that is material to the case or that could have had
21 any effect on the outcome of trial.

22 Kareem contends the pole camera video would have enabled him to impeach trial
23 witness A.S. He claims the video contradicts A.S.’s testimony on two points: First, that

25 ⁷ In his declaration in support of the Addendum to the Supplemental Motion for New
26 Trial, defense counsel states, “It is believed that the UCA’s communications with Simpson
27 may have caused the FBI to place the pole camera outside Simpson’s and Soofi’s apartment
but we have not been given that information.” (CR 543-1 ¶ 25.) The pole camera was
requested and authorized on April 9, 2015, before the date of the UCE’s first
communications with Simpson. (Exh. 6, Report of FBI S/A Ryan Mullen.) Therefore, the
UCE-Simpson communications could not have been the basis for the pole camera
authorization.

1 A.S. visited the apartment approximately one hour earlier than he stated in his testimony.
2 Second, that A.S. did not carry out a punching bag and weight bench as he stated during
3 his testimony.

4 On the first point, A.S. testified to his recollection of having visited the apartment
5 from 7:30 to 8:30 p.m. on May 1, 2015. The video timestamp shows he arrived at
6 approximately 6:30 p.m. and departed at approximately 7:05 p.m. That is not a material
7 difference, in part because neither Simpson nor Soofi appeared in the video during that
8 time window.

9 On the second point, Kareem is incorrect in multiple ways in his assertion that
10 “[A.S.] testified he moved out a punching bag, weight bench and all of his weights.” (CR
11 543 at 5.) A.S. did not testify specifically about the items he moved out of the apartment;
12 he only testified about the items he had in the apartment. (CR 543-1 27-28; RT 3/2/16
13 1814-15.) Additionally, the video shows A.S. carrying a weight bench out of the apartment
14 at 6:55:07 p.m. on May 1, 2015. (Exh. 7, Video Screenshot 20150501185507). A.S. did
15 not describe the punching bag or state whether he removed it from the apartment on May
16 1, 2015. Although the video does not clearly show A.S. carrying out a punching bag, it
17 shows him carrying various items that could either be a punching bag or contain one,
18 depending on the type, size, and composition of the punching bag.

19 Kareem asserts he could have argued that A.S. “was helping his brother load his car
20 or because he knew his brother was not coming back he is taking all of his personal items.”
21 (CR 543 at 5.) The first part of this assertion is wholly inconsistent with the video footage.
22 The footage featuring A.S. shows him doing exactly as he described during the trial –
23 carrying out items that appear to be exercise equipment, weights, and a weight bench.
24 Nadir Soofi does not appear in the video during the time A.S. was in the video, which does
25 not advance an argument or theory that A.S. was helping Nadir Soofi load his car. The
26 second part of the assertion is something the defense could have raised at trial without the
27 video – A.S. testified that he removed his remaining belongings from the apartment at
28 Nadir Soofi’s request and returned his key. The video footage adds nothing to the possible

1 argument that A.S. knew Nadir Soofi would not be returning, and Kareem fails to point out
2 how that possible argument would have amounted to a worthwhile basis for impeachment
3 of A.S.

4 Thus, the matters about which Kareem asserts he would have impeached A.S. are
5 insignificant. A less than one-hour difference between A.S.'s recollection of his time of
6 arrival and departure, and whether he retrieved a punching bag from the apartment, would
7 not have affected his credibility, especially in view of other evidence that corroborated his
8 testimony about things that happened in the apartment while Kareem was present. For
9 example, Trial Exhibit 480, in which Simpson sent a direct message over Twitter to another
10 person that "I was just telling a bro from Philly what u said," served to corroborate A.S.'s
11 testimony that Kareem (who was from Philadelphia) was present in the Simpson/Soofi
12 apartment as Simpson posted messages on Twitter and played ISIS videos. Further, the
13 video itself shows A.S. bringing shoes with him as he arrives to the apartment, and carrying
14 out weights and exercise equipment, just as he testified.

15 Kareem also claims the pole camera footage was exculpatory because it did not
16 show Kareem at the Simpson/Soofi apartment on May 1, 2015. At no time during the
17 entire trial did the government assert that Kareem was present at the Simpson/Soofi
18 apartment on that date. The government introduced testimony through Stefan Verdugo and
19 the juvenile witnesses that Kareem decided not to participate in the attack itself well before
20 May 1, 2015. His absence from the video, if anything, corroborates that trial testimony
21 and provides inculpatory evidence.

22 Nothing in the video is material, exculpatory, of value for impeachment, or
23 sufficient to undermine confidence in the verdict.

24 **C. Customs Inspections of Saabir Nurse Add Nothing to the Case**

25 Also subsequently discovered by undersigned, and disclosed in an abundance of
26 caution on March 15, 2019, are reports and documents relating to Customs inspections of
27 Saabir Nurse in connection with his May 28, 2015, departure from the United States and
28 his September 26, 2015, return to the United States, both via the George Bush

1 Intercontinental Airport (IAH) in Houston, Texas. The Customs reports included records
2 of an extraction of Nurse's cellular telephone upon his return to the United States.⁸ This
3 information also is not material and would not have had any significant effect on the trial.

4 The image of Nurse's cellular telephone was collected in September 2015, and its
5 content does not contain any information relevant to the trial. It revealed that although
6 Simpson was in touch with Nurse during the weeks prior to the attack, the communications
7 were about innocuous subjects such as soccer games. It contains no evidence suggesting
8 that Nurse knew about the drawing contest or funded the Garland attack. Indeed, the
9 indented letter admitted by defendant at trial shows the opposite – Simpson referenced a
10 different plan in the letter – the money from Nurse was not used for that original plan,
11 which to this date remains unknown. The letter reflects Nurse did not have foreknowledge
12 of the attack and that the plans for which the funds were intended did not come to fruition.⁹

13 Kareem claims the information from Nurse's phone shows "Nurse had numerous
14 contacts with Bell and Yayah following Simpson's death but not with Kareem." (CR 543
15 at 8-9.) Kareem never called any of these individuals to testify even though he had the
16 reports of Nurse's and James Bell's interviews prior to trial. The information extracted
17 from Nurse's phone adds nothing to this – the communications in his phone were not
18 incriminating, and his association with John Sabari ("Yahya") and Bell was reflected in the
19 reports in the case. The government provided Nurse's full biographical information,
20 including his street address, in discovery at Bates # 1414 (disclosed October 13, 2015, and
21 again November 18, 2015).

22

23 ⁸ Undersigned counsel disclosed the report containing the cell phone data in order to correct
24 any misimpression unintentionally given when counsel told the Court and defense counsel
25 that no search warrant had been executed on Nurse's cell phone. Although that
representation was technically true, it may have suggested that the phone had not been
searched at all, but undersigned counsel have since discovered that it was.

26 ⁹ Kareem also points out that FBI Agent Whitson testified that he was not aware of any
27 further investigations done of Nurse. Agent Whitson became case agent on the Nurse
investigation on April 27, 2016 (after the end of the trial in this case), and ceased case agent
responsibilities for the investigation on November 7, 2017. The questions defense counsel
28 directed to him about the Nurse investigation during the Kareem trial did not elicit personal
knowledge about that investigation.

1 Importantly, Kareem was the person who originally informed investigating agents
2 that “Yahya” (also occasionally spelled “Yaya” in reports) facilitated Skype calls between
3 Simpson and Sheikh Faisal. Undersigned counsel have reviewed the defense discovery
4 requests in this case and have not located an instance in which the defense sought additional
5 information about “Yahya” or any indication that the defense was unable to discover
6 “Yahya’s” true identity. This may because Kareem actually did know John Sabari was
7 “Yahya.” A cursory search through the report of extraction of Kareem’s Acer Aspire
8 computer revealed an employment verification letter for Sabari from Nordstrom Rack
9 stored on the computer with the filename “scan0001 (2).docx.” (Exh. 8, Employment Letter
10 for John Sabari.) Kareem’s possession of the letter on his computer indicates he would
11 have known Sabari by his true name, and his interview report shows he knew “Yahya.”

12 Even assuming Kareem did not know “Yahya’s” true identity, the government
13 provided discovery in the case that would have given the same information that Kareem
14 claims would have come from Nurse’s cellular telephone – “Yahya’s” phone number. The
15 government disclosed at Bates # 1982 (disclosed January 29, 2016) the fact that a search
16 of Simpson’s and Soofi’s apartment yielded a piece of notebook paper “with various names
17 and phone numbers, to include Yahya and others.” (Exh. 9 at 2, 4, Evidence report &
18 notebook paper page.) Undersigned counsel on several occasions offered to make all
19 physical evidence in the case available for inspection, and on one occasion defense counsel
20 traveled to the FBI Phoenix office to view the physical evidence in the case. Additionally,
21 the cell phone extraction report for Simpson’s White Galaxy S5 cellular telephone¹⁰
22 (disclosed as part of the hard drive marked Bates # 310 on September 2, 2015) contained
23 Simpson’s contact list. That contact list included two contacts with phone numbers under

26 ¹⁰ This phone was recovered at the scene in Garland, Texas. It was marked as Exhibit 39 at
27 trial and numerous admitted trial exhibits, including Exhibits 40-47 and 495, came from it.
28 The extraction of Simpson's cell phone also revealed text messages between Simpson and
Nurse that correspond to the text messages between Simpson and Nurse that were
contained in the extraction of Nurse's phone in September 2015.

1 the name “Yahya,” and additional email and telephone contact information for John
2 Sabari.¹¹ (Exh. 10 at 4, 6, Simpson cell phone contacts page.)

3 The defense likewise did not request more information about John Sabari in his true
4 name, even though trial witness Stefan Verdugo described him as a “bad guy like Abdul”
5 in one of his interviews with the FBI, disclosed at Bates # 1058-1060 (October 13, 2015,
6 and November 18, 2015). Had the defense made such a request for specific information
7 or reports regarding “Yahya” or Sabari, the government would have provided that
8 information. With that said, the defense has had the reports of John Sabari’s interviews for
9 approximately three years, and has yet to point to specific exculpatory information the
10 defense would have elicited from Sabari. This may be because none of the records from
11 Simpson’s phone or his cell phone provider records show any communications between
12 Simpson and Sabari.

13 The notion that the defense would have called Sabari and/or Saabir Nurse to
14 demonstrate Nurse was the source of Simpson’s and Soofi’s funding for the Garland attack
15 makes no sense. First, as noted above, the letter apparently written to Nurse describes the
16 money Nurse provided as having been intended for an unknown “original plan” that was
17 different from what Simpson and Soofi ultimately did. Simpson declared “something
18 dreadful” had occurred that caused plans to change. The notion that the defense would
19 have had a “Perry Mason” moment and extracted a confession from Nurse is implausible
20 – the defense has had possession of Nurse’s interview reports and has known both his
21 identity and his association to Simpson since the early stages of this case. Further, the
22 government disclosed at Bates # 1660 the fact that Nurse delivered the title to Elton
23 Simpson’s car to Simpson’s father, Dunston Simpson, Sr., after Elton Simpson’s death. In
24

25 ¹¹ As an aside, Kareem appears mistaken that the contact in Nurse’s phone would have led
26 him to Sabari. The contact “Yayah” in Nurse’s phone appears not to be John Sabari. The
27 “Yahya” contact on the notebook paper from the Simpson/Soofi apartment matches the
28 phone number for Sabari that was in Simpson’s Galaxy S5 cell phone, but the number in
Nurse’s cell phone contacts does not. (Exh. 11 at 9, Nurse phone contacts page.) A search
of Nurse’s cell phone contacts for Sabari’s known phone numbers yielded a negative result.
Therefore, Nurse’s phone would not have led Kareem to Sabari. Nurse’s phone also
contained a contact for Kareem under the name Abdulmalik (Exh. 11 at 7.)

1 that report, Dunston Simpson, Sr., referred to Nurse as Elton Simpson's former boss.¹² The
2 government disclosed a report analyzing Elton Simpson's email communications that
3 included a description of a message Simpson sent to Nurse on September 28, 2014,
4 referring to a sum of money, "\$3293.58," at Bates # 1676. The government disclosed the
5 report of Nurse's interview at Bates # 2008-2011. In the report, Nurse disclosed he had
6 known Elton Simpson since his freshman year of high school. He also stated Simpson
7 occasionally worked for him as a dental assistant. The government disclosed all of the
8 foregoing reports on January 29, 2016. Despite having had this information for years,
9 Kareem has not produced any concrete information to support his assertion that he would
10 have shown Nurse was the person who was responsible for financing and/or motivating
11 Simpson's and Soofi's violent plans.

12 Kareem also contends that information from Nurse's passport shows his religious
13 commitment and resources to travel internationally – making it more likely that Nurse
14 would be willing to engage in religious violence and that he had the resources to support
15 Simpson. This argument, though legally improper, logically flawed, and speculative,¹³ was
16 easily inferred at the time of trial based on the information above. *See United States v.*
17 *Jordan*, 485 F.3d 1214, 1219 (10th Cir. 2007) ("It is not sufficient for a defendant merely
18 to offer up unsupported speculation that another person may have done the crime. Such
19 speculative blaming intensifies the grave risk of jury confusion, and it invites the jury to
20 render its findings based on emotion or prejudice.").

21 Kareem contends Nurse's contacts with "Khalid Bell" (James Bradley Bell) and
22 "Yayah" (John Sabari, aka "Yahya") show the greater importance of those three

24 ¹² Kareem likewise knew Simpson worked for Nurse. He provided the same information
25 to agents during his June 10, 2015, interview.

26 ¹³ Ironically, Kareem claims his actions, which he argues consisted only of possessing and
27 viewing propaganda and speaking out about the treatment of Muslims, do not demonstrate
28 that he participated in planning a terrorist attack. (CR 505 at 11 ("Possessing or viewing
Jihadi propaganda or Muslim lectures or speaking out about the treatment of Muslims' or
their religion does not demonstrate that the possessor is a terrorist or has participated in
planning terrorist attack. Freedom of speech and thought are still protected provided they
do not veer into action and planning criminal acts.").)

1 individuals' testimony. The government previously noted in its response to Kareem's
2 original motion for new trial that Kareem was well aware of John Sabari, aka "Yahya." It
3 noted that Kareem's counsel apparently had researched the 2010 case against Simpson,
4 which provided ample notice of Sabari's connections to Simpson. Further, the government
5 noted Kareem himself told investigators about Sabari during his May 5, 2015, interview.
6 In that interview, Kareem told agents that Simpson and others would go to Sabari's
7 residence to speak to Jamaican cleric Sheikh Faisal. Kareem clearly knew about Sabari's
8 ties to Simpson and Soofi, and this Court previously included a finding on this subject in
9 its order denying Kareem's motion for new trial. (CR 469 at 8.) Again, Kareem points to
10 nothing that would suggest he would have been successful in eliciting exculpatory
11 testimony from Sabari, and even if he could make such a showing, he knew enough about
12 Sabari in advance of trial to have done so at the time of trial.

13 Much the same is true with respect to James Bell. Kareem was aware of Bell's
14 relationship with Simpson, and Bell's interview transcripts contained no evidence that
15 would have been relevant or helpful to the defense in this case. Again, the fact that Bell
16 was aware of the Garland contest is of no moment. His awareness of the contest in no way
17 suggests he had foreknowledge of the attack.

18 Here, as above, the defense is seeking to relitigate the previously-adjudicated
19 motion for new trial. As noted previously, Kareem was well aware of Sabari, Bell, and
20 Nurse, and their connections to Simpson. He included all three individuals on his witness
21 list, and although he called numerous witnesses in his defense case, he did not call Nurse,
22 Bell, or Sabari.¹⁴ Kareem has yet to point to a single shred of evidence indicating anyone

24 ¹⁴ Kareem also claims, "Nurse was on the Government's initial witness list but was
25 removed before trial as were Bell and Sabari. Clearly, the Government believed Nurse,
26 Bell and Sabari were helpful to its case against Kareem but removed them when it decided
27 they were not. It is a reasonable inference or probability that Nurse, Bell and Sabari were
28 removed when it was determined that they would provide evidence favorable to the defense
which appears to be after they downloaded Nurse's phone and copied his passport." (CR
543 at 13.) This claim fails factually as well as logically. First, the government's initial
and final trial witness lists did not include Nurse or Sabari. (CR 198, 294.) Meanwhile,
Bell was on both lists. (*Id.*) Second, the government places people on drafts of witness
lists to provide notice that they are potential witnesses. Numerous reasons exist for not

1 witnessed Nurse, Bell, or Sabari participating in discussions with anyone concerning the
2 Garland contest or conducting an attack on behalf of ISIS. Pointing to the mere existence
3 of communications among the three after the Garland attack does not demonstrate the
4 existence of information that would have been relevant and helpful to the defense.

5 Finally, even assuming some small quantum of evidence existed to show Nurse,
6 Bell, or Sabari had something to do with the conspiracy to attack the Garland contest or
7 more generally to provide material support to ISIS, as this Court previously found with
8 respect to Hendricks, such evidence would not foreclose or even necessarily serve to
9 undermine Kareem's proven participation in the conspiracy. (CR 469 at 9.)

10 **IV. The Government's Case Against Kareem was Strong**

11 The strength of the government's case is probably the most important factor in
12 weighing the materiality of undisclosed evidence. When the government's proof is strong,
13 undisclosed evidence has less capacity to affect the verdict. *United States v. Olsen*, 704
14 F.3d 1172, 1185-87 (9th Cir. 2013) (government presented evidence of defendant's year-
15 long research into use of ricin as a poison as evidence of intent to possess or use ricin as a
16 weapon; this evidence was overwhelming and made evidence that would have impeached
17 a government witness immaterial).

18 The evidence at trial was strong and it showed that Kareem's role in the conspiracy
19 included assisting Simpson and Soofi with firearms training, providing money to purchase
20 weapons and ammunition which were used in the attack, instruction on how to care for and
21 maintain their weapons, taking Simpson and Soofi shooting in the desert, hosting Simpson
22 and Soofi in his home, and providing a meeting location to plan the attack. (Ali Soofi RT
23 3/2/16 25-27, 29, 32-33; Martinez RT 2/24/16 12-14; Verdugo RT 2/19/16 12, 16, 30; Juan
24

25 calling a witness are unrelated to whether a witness might be helpful to the defense. For
26 instance, credibility, lack of personal knowledge, and avoiding jury confusion are
27 legitimate reasons not to call a witness that are unrelated to which party the witness's
28 information would help. Failing to call a witness is not a concession that a witness has any
material information, let alone material exculpatory information. Kareem's circular
reasoning on this point has no merit. If his reasoning had merit, it would mean that in any
case in which the government fails to call a witness on its witness list, that failure would
itself constitute notice to the defense that the witness would be helpful to the defense.

1 RT 2/24/16 13; Carlos RT 2/24/16 14-15.) The evidence also showed that Kareem
2 supported ISIS and knew Simpson and Soofi supported ISIS. (Ali Soofi RT 3/2/16 9-15,
3 39; Verdugo RT 2/19/16 20-21.) Among other things, he admittedly watched ISIS
4 beheading videos and the video of a Jordanian pilot being burned alive, while in Simpson's
5 company, and talked to Simpson about ISIS. (Carlos RT 2/24/16 12-13.) Multiple
6 witnesses also testified they witnessed Kareem, Simpson and Soofi celebrate and cheer the
7 attackers who murdered 11 people on January 11, 2015, inside the offices of the French
8 satirical magazine Charlie Hebdo, after the magazine published cartoons of the Prophet
9 Muhammad. (Ali Soofi RT 3/2/16 21-22; Verdugo RT 2/19/16 13-15.) Multiple witnesses
10 also testified they witnessed Kareem discuss his desire to attack the Garland contest. (Juan
11 RT 2/24/16 13; Verdugo RT 2/19/16 30; Carlos RT 2/24/16 14-15.)

12 The defendant bears the burden of showing a reasonable probability of a different
13 outcome. As the Supreme Court explained in *Kyles v. Whitley*, "The question is not whether
14 the defendant would more likely than not have received a different verdict with the
15 evidence, but whether in its absence he received a fair trial, understood as a trial resulting
16 in a verdict worthy of confidence." 514 U.S. 419, 434 (1995). Defendant received a fair
17 trial, the evidence against him was strong, and nothing undermines confidence in the
18 verdict.

19 **V. Conclusion**

20 For the foregoing reasons, this Court should deny Kareem's Supplemental Motion
21 for New Trial.

22 Respectfully submitted this 15th day of May, 2019.

23
24 MICHAEL BAILEY
United States Attorney
District of Arizona

25
26 *s/ Kristen Brook*
s/ Joseph E. Koehler
27 KRISTEN BROOK
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28

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of May, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, and that true and accurate copies have been transmitted electronically to counsel for the defendant via the ECF system.

Daniel Drake & Daniel Maynard, Attorneys for Defendant

By: /s Joseph E. Koehler